**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.N.KRISHNAN**

**WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929**

**WP(C).No. 33669 of 2007(G)**
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**AGAINST THE ORDER E.A.704/07 IN EP 330/06 IN OS.540/1986 of III ADDL.M.C.,TRIVANDRUM**
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**PETITIONERS:**
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**1. RAJESH, S/O. RAJENDRAN, AGED 38 YEARS, RESIDING AT ARAPPURAVILAKOM, VENPALAVATTOM, ANAYARA, THIRUVANANTHAPURAM.**

**2. SANTHOSH, S/O. RAJENDRAN, -DO- -DO-**

**3. SURESH, S/O. RAJENDRAN, -DO- -DO-**

**BY ADV. SRI.G.P.SHINOD**
**SRI.RAM MOHAN.G.**
**SRI.MANU V.**

**RESPONDENTS:**
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**1. OMANA, D/O. ESSAKKI AMMA, RESIDING AT VELAYIL VEEDU, KARAYIL, KAZHAKKUTTOM P.O., THIRUVANANTHAPURAM.**

**2. THANKAMONY, D/O. ESAKKI AMMA, RESIDING AT -DO- -DO-**

**BY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**M.N. KRISHNAN, J.**

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**W.P.C. NO. 33669 OF 2007**

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**Dated this the 14th day of November, 2007.**

**J U D G M E N T**

This writ petition is filed seeking to set aside Ext.P2 order and allow Ext.P1 petition. Ext.P2 is an application for appointment of a Commissioner to assess the value of building alleged to be constructed by the judgment debtors 6 to 8. The Court below did not entertain the application and dismissed the same. It is against that decision the present writ petition is filed. The learned counsel for the writ petitioner would contend that his clients are entitled to value of improvements under the Compensation for Tenants Improvements Act, 1958. The counsel had made available the judgment of the suit for perusal and as per the judgment what is declared is the plaintiff's right, title and possession and also a direction to evict he defendants from the plaint schedule building and in case of failure to evict, through the process of Court. The learned counsel would contend that the old building which was situated in the property had fallen

down and the judgment debtors 6 to 8 have constructed a building worth Rs.60,000/-. Therefore, they are entitled to the value of improvements. I am afraid the said contention cannot be entertained at the execution stage. What is sought to be executed is the decree of the Court and neither the judgment nor the decree contains any term for compensation for any improvements. The executing Court under Section 47 CPC cannot go beyond the decree and by any stretch of imagination it cannot decide the question whether judgment debtors 6 to 8 are entitled to compensation under the provisions of Compensation for Tenants Improvements Act. So the very purpose of issuance of a Commission for the said purpose is beyond the scope of consideration of the executing Court and I feel the Court below was perfectly justified in rejecting that application. Therefore, the writ petition lacks merit and it is dismissed. But it is made clear if there are any other legal remedy open to the writ petitioners dismissal of this writ petition will not stand in the way.

**M.N. KRISHNAN, JUDGE.**

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